

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
*See* Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

FILED BY CLERK

MAY 11 2010

COURT OF APPEALS  
DIVISION TWO

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

THE STATE OF ARIZONA,	)	2 CA-CR 2009-0360
	)	DEPARTMENT A
Appellee,	)	
	)	<u>MEMORANDUM DECISION</u>
v.	)	Not for Publication
	)	Rule 111, Rules of
NICHOLAS ANGELO LAGUNAS,	)	the Supreme Court
	)	
Appellant.	)	
_____	)	

APPEAL FROM THE SUPERIOR COURT OF GILA COUNTY

Cause No. CR 2008-398

Honorable Robert Duber II, Judge

AFFIRMED

Emily Danies

Tucson  
Attorney for Appellant

K E L L Y, Judge.

¶1 Charged with one count of possessing drug paraphernalia, appellant Nicholas Lagunas waived his right to a jury trial and then failed to attend his bench trial in January 2009. The court found him guilty in absentia and also found the state had proved he had one historical prior felony conviction in Gila County cause number CR

2002-682. After Lagunas was arrested some months later pursuant to a bench warrant, the court sentenced him in October 2009 to an enhanced, presumptive prison term of 1.75 years. This appeal followed.

¶2 Counsel has filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and *State v. Clark*, 196 Ariz. 530, 2 P.3d 89 (App. 1999). In compliance with *Clark*, counsel has provided “a detailed factual and procedural history of the case with citations to the record, [so] this court can satisfy itself that counsel has in fact thoroughly reviewed the record.” 196 Ariz. 530, ¶ 32, 2 P.3d at 97. Stating that she has found no arguable issue to raise, counsel asks us to search the record for fundamental error. Lagunas has not filed a supplemental brief.

¶3 Viewed in the light most favorable to upholding the conviction, *see State v. Tamplin*, 195 Ariz. 246, ¶ 2, 986 P.2d 914, 914 (App. 1999), the evidence established that two Town of Hayden police officers stopped a pickup truck they had observed running a stop sign. Lagunas was a passenger in the truck, and the officers took him into custody based on outstanding warrants for his arrest. During a search incident to his arrest, the officers found in his pocket two items—a spoon and a small, round, lidded, plastic dish—that were both “laced with white residue.” Laboratory analysis later confirmed the residue on the dish was methamphetamine; the amount of residue on the spoon was insufficient to be analyzed.

¶4 Substantial evidence supported the trial court’s finding of the elements necessary for Lagunas’s conviction for unlawfully possessing drug paraphernalia in

violation of A.R.S. § 13-3415(A), as well as its finding of his historical prior felony conviction. The 1.75-year prison term imposed is the presumptive sentence provided by former A.R.S. § 13-604(A)<sup>1</sup> for a repetitive, class six felony offense committed in February 2008. *See* 2007 Ariz. Sess. Laws, ch. 248, § 1. Our examination of the record pursuant to *Anders* has disclosed no reversible error and no arguable issue warranting further appellate review. *See Anders*, 386 U.S. at 744.

¶5 Accordingly, we affirm Lagunas’s conviction and sentence.

/s/ Virginia C. Kelly  
VIRGINIA C. KELLY, Judge

CONCURRING:

/s/ Joseph W. Howard  
JOSEPH W. HOWARD, Chief Judge

/s/ Philip G. Espinosa  
PHILIP G. ESPINOSA, Presiding Judge

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<sup>1</sup>Arizona’s criminal sentencing code was comprehensively renumbered, *see* 2008 Ariz. Sess. Laws, ch. 301, §§ 1-120, effective “from and after December 31, 2008,” *id.* § 120. In this decision we refer to the former statute numbers in effect when Lagunas committed this offense.